



August 24, 2001

Lieutenant Arturo Valdez
McAllen Police Department
1501 Pecan Boulevard
McAllen, Texas 78501

OR2001-3765

Dear Lieutenant Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151054.

The McAllen Police Department (the "department") received two requests from the same individual for information relating to three case numbers. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that is made confidential by statute. You claim that the offense report in case no. 91-005951 is confidential under former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records.¹ However, the report in case no. 91-005951 does not concern juvenile conduct. Thus, this report is not confidential under former section 51.14(d) of the Family Code. Therefore, it may not be withheld under section 552.101 of the Government Code.

You claim that the offense reports in case nos. 89-034318 and 90-050045 are excepted from public disclosure under section 552.108 of the Government Code. Section 552.108 excepts from disclosure "information held by a law enforcement agency or prosecutor

¹Former section 51.14(d) provided that "law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public[.]" See Open Records Decision No. 644 at 2 (1996).

that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 applies to the information. See Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You assert that the reports in case nos. 89-034318 and 90-050045 concern ongoing investigations. These reports reflect, however, that the respective investigations were suspended in 1989 (no. 89-034318) and 1991 (no. 90-050045). Moreover, it clearly appears to this office that the applicable statutes of limitations have expired. Because your claims under section 552.108(a)(1) are not consistent with the contents of these reports, we are unable to conclude that their release would interfere with the detection, investigation, or prosecution of crime. See Gov’t Code § 552.108(a)(1); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Furthermore, you have not otherwise demonstrated that the release of any of the information contained in these reports would interfere with law enforcement or crime prevention. See Gov’t Code § 552.108(b)(1); Open Records Decision No. 508 at 4 (1988) (stating that governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts unless information does so on its face). We thus conclude that the offense reports in case nos. 89-034318 and 90-050045 are not excepted from disclosure under section 552.108.

We note, however, that report no. 90-050045 contains a social security number. A social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that this social security number either was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain this social security number. Therefore, we have no basis for concluding that this social security number was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing this social security number to the public, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Report No. 90-050045 also contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). A Texas driver's license number must be withheld from public disclosure under section 552.130(a)(1).

Lastly, we also note that these appear to be the requestor's social security and driver's license numbers. The requestor has a special right of access under section 552.023 of the Government Code to information that is excepted from public disclosure under laws that are intended to protect the requestor's own privacy interests.² The requestor's social security and driver's license numbers may not be withheld from him under sections 552.101 or 552.130.

In summary, the report in case no. 91-005951 is not excepted from disclosure under section 552.101 of the Government Code, and the reports in case nos. 89-034318 and 90-050045 are not excepted from disclosure under section 552.108. Report no. 90-050045 contains a social security number that may be confidential under section 552.101 in conjunction with federal law and a driver's license number that must be withheld from public disclosure under section 552.130; however, the requestor has a special right of access to his own social security and driver's license numbers under section 552.023. The rest of the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

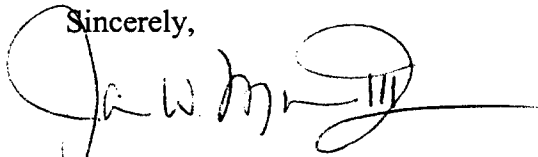
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 151054

Enc: Submitted documents

c: Mr. Bradley Garza
1081 Loma Verde Lane
El Paso, Texas 79936
(w/o enclosures)